THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.12535 OF 1996
Dated:29-12-2006

Between:
C.Venkata Rayaju Dhaveji Petitioner

And

The District Collector,
West Godavari District,
Euru and two others Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.12535 OF 1996

ORDER:

1. This writ petition has been instituted seeking directions to the respondents to fix up and pay compensation for deprivation of the property of an extent of Ac.0.18 cents of land situated in R.S.No.325/7 of Kalipatnam Village, Mogaltur Mandal, West Godavari District after declaring the action of the respondents in acquiring the said land without following the due process of law as bad.

2. The writ petitioner asserts that his father-in-law was the absolute owner of land in Survey No.325 of Kalipatnam Village of Mogaltur Mandal in West Godavari District and that without following the procedure contemplated under the Land Acquisition Act (for short 'the Act'), the respondents have taken possession of land of an extent of Ac.0.18 cents belonging to his father-in-law and laid an approach road thereon. The writ petitioner asserts that the original owner died on 26-01-1996 and before his death he executed a Will on 27-03-1995 while being in a sound state of mind and disposition bequeathing in his favour certain properties of which the land concerning this writ petition is one such. The writ petitioner asserts that the land in question is a very valuable land and it has been unjustly taken possession of by the respondents for formation of an approach road without following the due process of law. The writ petitioner would further assert that in fact, the

original owner had put the State and the Superintending Engineer of Roads and Buildings Department at Eluru on notice demanding recovery of possession of the property and for damages, while he was alive. The writ petitioner has also asserted that in spite of receiving the said notice, the respondents have not reacted in any manner.

3. Though the writ petition has been pending in this court from 1996 onwards, at long last, the Superintending Engineer, (Roads and Buildings), Eluru Circle, had filed a counter affidavit in the matter on 18-11-2006. The Superintending Engineer asserts that Kalipatnam village was an estate village which was taken over in terms of the Estate Abolition Act, 1948 and that the Survey and Settlement Operations were not completed resultantly Ryotwari pattas are not issued to the Ryots and when the land in question has been verified physically, the bitumen top road formed by the department on the left bank of Kaalipatnam canal is strictly laid and confined to the Government land alone. Therefore, in the counter affidavit, it is suggested that the claim made by the writ petitioner seeking compensation for a land, which has not been acquired at all does not arise.

4. The writ petitioner had filed a rejoinder (reply affidavit) disputing the correctness of the statements made in the counter affidavit. The writ petitioner has placed a communication dated 19-07-1996 issued by the Executive Engineer (Roads & Buildings) Division, Bheemavaram, which *inter alia* states as follows:

> *" As enquired from the local public in the Kalipatnam (V) it was learnt that a small piece of land in R.S.No.325/7 was given to this department for formation of Road from Mogaltur to Bhimavaram (via) Kalipatnam. It was also informed by the villagers of the Kalipatnam that the then owner of the above land Sri Sistla Pitchayya had voluntarily given the said piece of land*

for forming the Road along with other Ryots also in the interest of formation of new road. But, there is no information available in this office in this regard due to loss of records during 12/88."

5. The writ petitioner in response to the above communication dated 19-07-1996 of the Executive Engineer has disputed the claim that the original land owner has voluntarily surrendered the land belonging to him for formation of road in question.

6. Be that as it may, during the course of hearing, the learned counsel for the writ petitioner has brought to my notice that the writ petitioner had submitted a representation to the District Collector, West Godavari at Eluru suggesting to him that the bridge constructed across the Kalipatnam canal, for approaching which the land belonging to the Principal of the writ petitioner has been taken possession of without payment of compensation, be named after his father-in-law. The writ petitioner has also pointed out the public spirit exhibited and the services rendered by the Principal land holder. Therefore, the learned counsel for the writ petitioner would urge that if the District Administration considers the entire question raised by him in his representation dated 23-12-2006 favourably, the issue relating to acquisition of the property belonging to the Principal of the writ petitioner without following the due process of law need not be considered at all. The learned Government Pleader for Roads and Buildings would, per contra, plead that in view of the conflicting factual situation emerging from the communication addressed by the Executive Engineer on 19-07-1996 and the present counter affidavit filed by the Superintending Engineer, the District Administration would certainly consider the representation submitted on 23-12-2006 by the petitioner and that an appropriate decision in the matter would be taken.

7. I hope and trust that the entire issue could be considered sympathetically, in view of the emerging fact that possibly the land belonging to the Principal of the writ petitioner may have been acquired for formation of the approach road to the bridge that got constructed across the Kalipatnam canal long back and a decision can be taken in this regard within three months from the date of receipt of this order. The decision be communicated to the writ petitioner. A copy of the representation said to have been submitted by the writ petitioner to the District Collector of West Godavari on 23-12-2006 has been kept on record of this case.

8. With this, the writ petition stands disposed of. No order as to costs.

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NOOTY RAMAMOHANA RAO,J

29-12-2006
Stp